

EX PARTE OR LATE FILED



Building The  
Wireless Future™

July 6, 1995

**CTIA**

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Telecommunications  
Industry Association  
1250 Connecticut  
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Mr. William F. Caton  
Secretary  
Federal Communications Commission  
1919 M Street, NW, Room 222  
Washington, DC 20554

**RECEIVED**

**JUL 6 1995**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

RE: *Ex Parte* Letter -- RM-8577  
In the Matter of Amendment of the Commission's Rules To Preempt State and  
Local Regulation of Tower Siting For Commercial Mobile Services Providers

Dear Mr. Caton:

On Thursday, June 6, 1995, Mr. Thomas E. Wheeler, President/CEO, Cellular Telecommunications Industry Association (CTIA), sent the attached letter and its attachments to Chairman Reed E. Hundt, with additional copies to the following people:

Commissioner James H. Quello  
Commissioner Andrew C. Barrett  
Commissioner Rachelle B. Chong  
Commissioner Susan Ness

Ms. Rosalind Allen	Mr. Ralph Haller	Mr. Daniel Phythyon
Mr. Laurence Atlas	Ms. Judith Harris	Mr. David Siddall
Mr. Rudy Baca	Mr. Michael Katz	Mr. Andrew Sinwell
Ms. Beverly Baker	Ms. Gina Keeney	Ms. Lisa Smith
Ms. Lauren Belvin	Mr. William Kennard	Mr. Richard Smith
Mr. James Casserly	Mr. Blair Levin	Dr. Thomas Stanley
Ms. Jackie Chorney	Ms. Jill Lockett	Mr. Gerald Vaughan
Mr. John Cimko	Mr. Jay Markley, Jr.	Mr. Michael Wack
Mr. James Coltharp	Ms. Ruth Milkman	Ms. Kathleen M.H. Wallman
Mr. Bruce Franca	Mr. John Nakahata	Ms. Karen Watson
Mr. Don Gips	Dr. Robert Pepper	Mr. Peyton Wynns

Pursuant to Section 1.1206 of the Commission's Rules, an original and one copy of this letter and the attachment are being filed with your office. If there are any questions, please contact the undersigned.

Sincerely,

Timothy R. Rich

Attachments.

No. of Copies rec'd  
List A B C D E

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**Building The  
Wireless Future™**

July 6, 1995

The Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

## **CTIA**

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Telecommunications  
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**Thomas E. Wheeler**  
President / CEO

Dear Mr. Chairman:

With the recent licensing of the A and B blocks for broadband Personal Communications Services (PCS), we stand at the beginning of a new and exciting time for wireless communications. The auction winners are already engaged in intense preparations to deliver these services to the American public as quickly as possible.

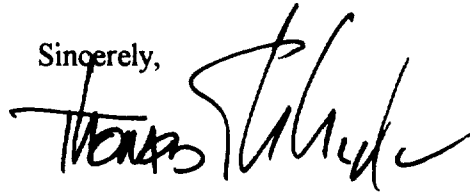
These new wireless companies are rapidly building their systems both to meet the projected demand for these new services, as well as to satisfy the Commission's PCS build-out requirements. Despite their efforts, however, these companies are faced with a real obstacle that threatens to limit and delay widespread deployment of PCS. State and local governments, through misguided and often ill-informed zoning procedures, are unnecessarily hindering the development of a truly national wireless infrastructure.

Representing the wireless industry on this issue, CTIA filed a Petition for Rule Making before the FCC on December 22, 1994. The Petition states, in part, "that the principles of competition, efficiency and regulatory parity outweigh the state's interest in zoning and other regulation." The CTIA Petition concludes by requesting a Notice of Proposed Rule Making proposing to preempt state zoning regulations imposed on wireless providers.

With regard to the CTIA Petition, please find enclosed a letter from Mr. Joseph Vivona, Vice President and Chief Operating Officer of CellularOne of Upstate New York. Mr. Vivona relates a particularly enlightening and frustrating example of how local municipalities can hinder the development of ubiquitous wireless services. Specifically, in Woodstock, New York, CellularOne has encountered numerous difficulties in merely *replacing* an existing tower with another tower of equal height. The delay tactics continue, despite CellularOne's efforts to satisfy seemingly every demand -- legitimate and otherwise -- of the Town of Woodstock.

Cases like this one are not uncommon; indeed, access to nationwide wireless services is potentially threatened by the country's 38,000-plus local governments. I have also enclosed a sample of press accounts relating to antenna siting and zoning difficulties. These difficulties are a constant concern for incumbent wireless providers, and they will only grow as PCS systems are built. I urge you to consider these indicative cases when rendering your decision.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas E. Wheeler", written over a horizontal line.

Thomas E. Wheeler  
President/CEO

Enclosures.

cc: Commissioner James H. Quello  
Commissioner Andrew C. Barrett  
Commissioner Rachelle B. Chong  
Commissioner Susan Ness

# CELLULAR ONE

*of Upstate New York*

17 Computer Drive East  
Albany, New York 12205

Tel: 518-438-2400

Fax: 518-438-2699

June 14, 1995

Randall S. Coleman  
VP for Regulatory Policy & Law  
Cellular Telecommunications Industry  
Association  
1250 Connecticut Avenue N W  
Suite 200  
Washington, D.C. 20036

Dear Randy,

Cellular of Upstate New York, Inc., dba Cellular One of Upstate New York, is the licensed non-wireline carrier in Market #563, New York RSA #5. We are now in the process of constructing our 19th and 20th cell sites in our market and are well on our way towards completion of a highly effective and redundant wireless infrastructure within approximately 5,500 square miles of very difficult terrain located within a triangular area defined by the capital of New York State, Binghamton and New York City.

Tim Rich suggested that I write to you summarizing the difficulties that we have encountered while attempting to receive local zoning approvals for an additional cell site (#21) on Overlook Mountain in the Town of Woodstock, New York. This site would also be a key site in our microwave network. I am hopeful that this will be helpful to you in your efforts with the FCC and/or Congress to establish rules that provide exemptions from local zoning for wireless carriers.

Although we believe that we have sufficient votes on the Planning Board to receive approval, the board is literally frozen in fear of the local environmental community suing them if they give us approvals without turning over every possible stone of information that has any relation to our project. The local environmental community is extremely well funded. In fact, one of the leaders just bought a local newspaper for the purpose of communicating their views to the local residents. We have estimated that 2 or 3 of the 7 planning board members are in support of the environmental community but, given the emotion of the situation, the votes we have projected on our side can easily be swayed to the other side.

The most amazing point to me is that we are simply replacing an existing 120' guyed tower with a 120' self-supporting tower. The FAA has already issued a ruling that we will not need to light or paint the tower. The only difference in the two towers is the width. The existing tower is 1.5' wide. Our replacement tower would be 6' wide at the top and would have cell arms attached at the top. Including the arms at the top, the lateral width at the very top would be approximately 21'.

As a requirement of the board (and the environmentalists), we have paid a consultant over \$12,000 to have a visual study done. We studied all of the areas that the board and environmentalists specifically selected. We even did this in two phases. After they discovered that it didn't look too bad on the first round, they decided to select more sights to include in the study. As a matter of fact, there are only approximately 12 locations where the tower is visible at all. Almost all of them are at distances of 2-4 miles. The computer generated visual study that we did proves that there is very little visual difference between the existing tower and the new tower from the most vulnerable locations. Within a half mile of this tower is a 299' tower with lights and a DEC tower.

By the way, prior to submitting our application for this tower, we had been in the final phases of negotiation with the owner of the 299' tower to simply place our equipment on their tower and in their building with no external modifications to either. When the owners of that tower realized that the town was going to put them and us through such a rigorous procedure, they backed out of our negotiations altogether. This is a very important point to keep in mind because the 299' tower would have given us infinitely better cellular service and would have cost us infinitely less money to construct and there would have been no visual impact on the town.

To make it more complicated, the New York State Department of Environmental Conservation had acquired many acres of Overlook Mountain through an eminent domain procedure in 1989, with the exception of all the rights and interests of a tower site lease then in existence between Peter Moncure, Lessee, and C. Powers Taylor, Lessor and former owner of all of the condemned property on Overlook Mountain. That lease clearly allows both parties of the lease to expand said site for "radio, television and other broadcast" purposes.

When we first applied for zoning approvals for this site in February, 1995, we included a letter from the Superintendent of the DEC's Bureau of Real Property stating that, "The approval by the State of New York in its capacity as fee owner of the parcel is not required for the exercise of rights acquired under the lease" just to cover ourselves. We also submitted the signed approvals from C. Powers Taylor and Peter Moncure, both parties in the lease that had been excluded from the jurisdiction or interest of the DEC in the condemnation deed filed in Ulster County in 1989.

Since the submission of this application to the Town of Woodstock Planning Board, some of the board members and environmentalists have attempted to turn that around. They have found one attorney on the DEC staff that has since declared that cellular telephones do not fall under the definition of "radio, television or other broadcast" services mentioned in the excluded lease.

Subsequently, we have had two meetings with the General Counsel and Deputy Commissioner of the DEC in which we presented our legal brief proving without a shadow of a doubt that the equipment to be located at this sight clearly falls under the definition of radio, i.e. our Radio Station Authorizations issued by the FCC and our classification under Commercial Mobile Radio Services not only with the FCC, but also with the New York State Public Service Commission.

The DEC clearly understands that our only recourse is to sue them if they do not reverse their position and that our legal position would most likely prevail. But they said they must give equal time to the environmentalists by giving them another meeting. We are awaiting the outcome of that at this time. Obviously, the environmentalists are using the DEC to at least delay the zoning process, if not to defeat our application.

Meanwhile, our legal and engineering costs are climbing to astronomical proportions. In addition to the \$12,000 visual study mentioned above, I am estimating that we have already spent in excess of \$30,000 in order to provide all the materials that have been required and to answer the avalanche of issues that have been raised in the hopes of discouraging our application. A partial list of issues includes:

- OWNERSHIP ISSUES
- COVERAGE MAPS OF OUR PRESENT SYSTEM
- COVERAGE MAPS OF OUR PROPOSED SYSTEM
- POWER LEVEL STUDY OF ALL PROPOSED & CURRENT EQUIPMENT
- STATEMENT ON THE POSSIBILITY OF THE TOWER FALLING
- STATEMENT ON ALTERNATE METHODS TO MICROWAVE
- ENDANGERED SPECIES ISSUES
- SAFETY ISSUES, INCLUDING ELECTROMAGNETIC RADIATION
- PUBLIC UTILITY ISSUES
- FAA ISSUES
- STATEMENT ON THE NEED FOR THE 120' HEIGHT
- STATEMENT ON THE NEED FOR CELL ARMS
- STATEMENT ON THE NEED FOR A SELF-SUPPORTING TOWER
- VISUAL IMPACT STUDY
- STUDY ON ALLEGED INFRACTIONS OF LESSEE
- LEGAL BRIEF ON THE "RADIO" ISSUE FOR DEC

To add complete insult to injury, we have been required by the board to submit \$43,500 in escrow money, in addition to the estimated \$42,000 we have spent ourselves, so the board could retain outside legal and engineering consultants to review all the material we have submitted!! Yes, that adds up to \$85,500--so far!! And we haven't begun building yet.

This money has been given to them under protest. It was submitted along with yet another legal brief that proves that they have no legal right to require such excessive sums or to arbitrarily spend it in any way they wish. For example, they paid their engineering consultant to prepare and mail approximately 40 Lead Agency Notifications to the various interested agencies. This is normally done by the Secretary to the Planning Board who is on salary and would normally be no extra charge to us. And, there is no third party independent escrow agent to decide what is appropriate. This is not escrow--this is a form of extortion! If we don't supply the "escrow", they can't proceed with our application process.

It is very clear that they are using every conceivable issue, whether it be within their legal rights to do so, to discourage, delay and otherwise dissuade us from building a cell site in this location even though it is well within our constitutional rights and, in fact, our legal obligations to do so.

It is also very clear that the FCC and/or Congress need to give us wireless carriers some help in meeting the timelines and deadlines they have clearly demanded as part of our licenses. We have acted with total responsibility in attempting to select and build environmentally sensitive and effective tower sites that will ultimately make our country safer, more progressive, more competitive in the world markets and more economically sound.

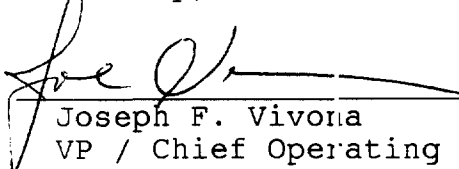
Unfortunately, the environmentalists are in no way required to be so responsible. They can employ every conceivable tactic whether it be reasonable or totally irrational--and we have no recourse against them in a court of law.

I've got to admit, as much as I dislike to, that I fear that we're going to be left dangling on a rope trying to meet the needs of the federal government without receiving their support.

Especially in the event that my skepticism prevails, is there anything else that the CTIA can do to help us in our plight?

Please let me know what I can do to help you in your efforts to inject more rationality and accountability into the local zoning process for tower sites. Thank you.

Sincerely,

  
\_\_\_\_\_  
Joseph F. Vivona  
VP / Chief Operating Officer

✓ cc: Tim Rich, CTIA

**LUCE** PRESS CLIPPINGS

# Tower opponents cite cancer worries

By **BILL KONIGSBERG**  
The Herald & News

**RINGWOOD** — Once again, three proposed towers have residents concerned. This time cancer and property values — not the view of Ringwood Manor — are the chief issues.

Bell Atlantic Mobile Systems has proposed building three 60-foot flagpoles with cellular antennas on top to improve and expand phone service in the borough.

More than 50 people crowded into a zoning board hearing Monday to complain about the towers, which would send out radio signals from the site next

to the Erksine Lakes Property Owners Association clubhouse. Though questions were limited to technical ones, petitions were circulated, and residents said they are troubled about towers being planned for a residential area.

"I'm very concerned about the resale value of my home," said Joanna Atlas, an Upper Lakeview Avenue resident who lives across the street from the proposed site. "Furthermore, I am very leery of when experts say that something poses no health risk. I lost a family member who was exposed to asbestos. And I know there are

people out there who say that cigarettes are just fine."

In phone interviews yesterday, experts on electric and magnetic fields declined to say that residents have no need for concern.

Dr. Michael Greenberg, co-director of the New Jersey Graduate Program of Public Health at Rutgers University, New Brunswick, said that scientists don't really know what the health risks of cellular towers are. But given the fact that the non-ionizing radiation emitted from cellular antennae is the same as radiation from a microwave oven, he said that

"Prudence would dictate keeping these facilities separate from people."

Dr. Daniel Wartenberg, associate professor at the Robert Wood Johnson School of Rutgers University, said that there has been no rigorous look into health problems and cellular phones. He agreed that precaution made sense when placing these towers. "They probably shouldn't be put next to schools or playgrounds," he said.

But Robin Nicol, a spokeswoman for Bell Atlantic Mobile Systems, Bedminster, said there is no need for resi-

dents to fear these towers. "We have had towers throughout New Jersey for 10 years, and there has been no incidence of any known health problems related to the towers," she said.

According to a report by federal Energy Department there has been concern about electric and magnetic fields from power lines causing diseases in people who live and work in close proximity.

In nine studies since 1979 of children who live near high-current power lines, five of the studies showed a statistically

significant association with cancer.

Even if that is true about power lines, there is a difference between the radiation from power lines and radiation from cellular antennas, said Rich Enright, general manager of Bell Atlantic Mobile Systems network engineering for North Jersey. The cellular radiation is at a lower frequency, he said.

"It's the same energy as lights," he added. "And from 75 to 80 feet away, it has the same radiation effect as a baby monitor."



MAY 24, 1995

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PRESS CLIPPINGS

## Board delays again on phone tower

Polk County could lose out on a new communications tower, or it could gain a new source of revenue from the company offering the build that tower. The county commission last week delayed for another month the decision on Cellular One's offer to build a tower for joint use.

The cellular telephone company has said it will build the tower and move the county's equipment to it, then give the tower to the county. The company has already received permission from the Forest Service to build a tower near Boyd Gap. The two towers, and possibly a third on private land, would provide cellular phone service throughout the county, including the Ocoee gorge.

A committee appointed last month to negotiate with Cellular One ~~ought to have the county receive a monthly payment of either \$1,000 or \$500, but the company did not agree. In its response, Cellular One official noted they planned to spend \$200,000 on the new facilities, which would be given to the~~

county. The company said it is looking for another site for the tower it needs to provide the service.

The company will have to pay \$2,500/month to the Forest Service for both locations, since both are on forest land. Mike Laycock said, "They pay everybody else but not us. It's another situation where the Forest Service gets the money but not us." Edsel Deal said "If they don't want to pay us \$1,000 a month, forget them."

Laycock said he wouldn't have a problem with not having any payment for the first few years since Cellular One will be making a major investment and the county will benefit. Curtis Biggs noted that the county's tower is 20 years old and asked what it would cost to replace it at county expense. County Executive Hoyt Firestone said there has been no maintenance to the tower itself over the years.

Mike Stinnett pointed out that cellular phone service will benefit a lot of residents and Tony Reynolds,

Emergency Management director, said the county's EMA will be able to use the system. Stinnett suggested a shorter lease agreement after which there would be renegotiations.

Frank Bishop said Cellular One won't be paying taxes if it gives the tower to the county. Firestone said the company is willing to either give the tower to the county or retain ownership.

Angela Spurling asked if other companies have come forward and Firestone explained that there are only two companies with permission to serve Polk at this point. Cellular One, he said, is the only one that has made the effort to get started.

Mark Bishop said, "We can afford to stay at the bargaining table a little longer." Mike Laycock made a motion to reaffirm the committee's offer of a \$1,000 monthly payment or a ten-year life to the contract rather than the 25 years suggested.

# Cellular phone tower awaits report on risks

By Paul Thompson  
Staff writer

A decision on a proposed cellular telephone booster tower in the Hi-Pointe neighborhood is on hold until city officials determine whether the facility's low-level radioactive emissions could pose health risks to residents.

After a public hearing April 27, zoning specialist McKinley Hughes told CyberTel Cellular representatives the fate of their conditional use application rests on a determination by city health and public safety officials on what risks — if any — the transmitter could pose. He said the company would be notified of the decision within two weeks.

CyberTel Cellular, a division of Ameritech Corp., wants to build the transmitting tower and station at 6817 Clayton Ave., on a wedge between Clayton and Oakland Avenue, next to Highway 40 (Interstate 64).

Craig Biesterfeld, a CyberTel-Ameritech attorney, said the tower is needed to handle the proliferation of cellular telephone use along the heavily traveled highway and among doctors and medical workers at nearby hospitals.

He said the tower, with a small equipment building next to it, would be 50 feet high and look similar to a street light pole.

Biesterfeld said Hi-Pointe was picked for the tower because, as its name implies, it is the highest elevation in the city.

Alternative sites, he said, would not be practical because the elevation and proximity to heavy cellular traffic dictate the location.

"We're constrained by the laws of physics," he said.

But the Hi-Pointe Residents Association is opposed to the station, primarily because members are uncertain if the low-level radiation emitted by the transmitter would pose health risks to the neighborhood.

Timothy Walters, an attorney from the Hi-Pointe neighborhood, said residents also were concerned the transmitter would be expanded if it were allowed in the area. Company officials said they had no intention of expanding the facility.

Walters said the transmitter would serve people passing through the neighborhood, not local residents.

"It would primarily service the people passing through our area on their way to suburbia or downtown," Walters said.

He said residents feared the transmission tower would bring "change — change for the worse."

Frank Mead, treasurer of the Hi-Pointe association, said the

## HI-POINTE

group voted against the tower because its impact on them was unknown.

"The human response was we don't want it in the neighborhood because we're not sure it's going to do harm and we're not sure it's not going to do harm," Mead said.

Biesterfeld said Ameritech has transmission towers at sites across the country — on school grounds and hospital buildings in Jefferson City as well as in several St. Louis neighborhoods.

"We don't have any (safety) concerns," he said. "Ameritech is one of the largest corporations in the world, and we're not going to do anything to harm people."

Mead responded, "We don't think the interests of a big business with all their power and money should be allowed to come in against the rights of the little people who live and pay their taxes in one of the safest neighborhoods in the city."

Biesterfeld said radioactive emissions from the proposed tower would be 17 to 3,000 times below federal safety standards.

Alderman Daniel McGuire, D-28th Ward, who represents the area, said he was neither for nor against the tower. But he asked city officials to conduct a safety and health evaluation before a decision on the conditional use permit is reached.

"I would have no objections, provided either our Health and Hospitals Department or our Department of Public Safety found no hazard," McGuire said.

St. Louis, MO  
Southwest City Journal  
St. Louis Met Area

Sunday

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APR 30, 1995

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TIMES  
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**VAN NUYS**

## Opponents Block Proposed Antenna

A group of Van Nuys residents and merchants Tuesday blocked plans by AirTouch Cellular to install a 45-foot-high transmission pole in their neighborhood.

With two members of the Los Angeles Board of Zoning Appeals absent, they convinced a third member that a cellular phone antenna at Fulton Avenue and Victory Boulevard would be inconsistent with surrounding homes.

Board members Chris Kezios and Allen Gilbert voted to permit installation of the pole, and member James Acevedo dissented. Chairman Peter Weil and member James Silcott were absent.

The lack of a majority—three votes—upheld a prior ruling by William Lillen-

berg, unanclute zoning administrator, that halted the antenna's installation. Lillenberg told the board Tuesday that the antenna would be the tallest structure in the community and a "noticeable eyesore."

"It's contrary to any effort to improve the neighborhood," Lillenberg said.

AirTouch representatives argued unsuccessfully that the transmission pole is no more obtrusive than telephone poles now in the neighborhood and is virtually identical to antennas approved in other communities.

"This design before you today is very similar to other projects approved on a commercial site in a residential area," said John Bitterly, an AirTouch consultant.

Phone company officials want the pole to improve area reception for cellular phone users. Other locations that were considered would be so far away that a second pole would also be necessary, Bitterly said.

Bitterly noted that the 45-foot-high pole is much smaller than the 76-foot antenna often used for better reception. He disagreed that it would be a detriment to the neighborhood, and offered to landscape around the pole to make it more attractive.

Zoning board officials limited comments Tuesday to land-use issues, saying opponents' health concerns are "an issue for the state," Kezios said.

Instead, residents and merchants talked about how the transmission pole would look in their neighborhood and how the fear of health risks could affect local businesses.

Jacqueline Kronberg, an officer with the Fulton Place Condominium Assn.,

called the proposed tower an "electronic monstrosity" that would lower surrounding property values and be a prime target for graffiti vandals.

"A 45-foot pole with a microwave dish would dominate our landscape," said Kronberg. "What will happen to these installations in the case of an earthquake?"

Don Schultz, president of the Van Nuys Homeowners Assn., was even more critical: "We feel it's a blight in the area."

—DOUGLAS ALGER

**LUCE** PRESS CLIPPINGS

# Comcast tower debate drags on

By JOHN McNALLY  
Mercury Staff Writer

ROYERSFORD — Judge Lance Ito, Johnnie Cochran and Marcia Clark were not in Royersford Wednesday night, but there was no shortage of innane, redundant, seemingly pointless questions, followed by long-winded, roundabout, vague responses at the Zoning Board hearing.

About 75 area residents got the chance to yawn their way through four hours and 10 minutes of testimony concerning Comcast Metrophone's application to the zoning board for a special exception to build a 185-foot communications tower in Royersford.

The hearing, held at Royersford Elementary School, began at 7 p.m. and ended at 11:10 p.m. before the second witness for Comcast completed his testimony.

"To the best of my knowledge" and "I am not aware of" prefaced a number of answers given by the two Comcast representatives.

The proposed tower is to be built just off the 300 block of Third Avenue — about 190 feet from five homes — on the old Cann & Saul property.

Comcast had applied and was denied a building permit by borough council in March and has been forced to apply for a special exception because, according to council's interpretation of the borough ordinance, any building over 55 feet in

have a special exception.

Comcast attorney Robert Brant, of Collegeville, disputes that interpretation and said the borough ordinance clearly states in two sections that towers already have special exceptions and are permitted uses.

Nevertheless, the hearing went on and on and on.

The first witness was Rich McKinnon, who works for a company contracted by Comcast to locate tower sites, handle the zoning and leasing aspects and oversee construction.

McKinnon testified to the physical aspects of the tower and its distance to the homes on Third Avenue.

He was asked ad nauseam by borough solicitor Alan Boroff about the distances of the tower legs to the surrounding security fence to the concrete foundation to the building housing radio equipment — all of which are subject to change and seemingly unrelated to the real concerns of the residents.

Danielle Niemczuk, of the 400 block of Pine Street, wanted to know what affect the tower would have on residential real estate values.

"I've seen reports concerning real estate values from New Jersey, New York and other areas of the country," McKinnon said. "The reports indicate no affect on values one way or another."

Third Avenue resident Dan Galaska, who lives across the street from the site and is a mem-

Commission, brought with him public relations material sent out by Comcast.

The brochures he brought stated that neighbors of tower sites were consulted about views and aesthetics before sites were proposed.

Galaska asked McKinnon what Royersford residents were consulted prior to the tower plans being submitted to council.

McKinnon said that he knew of no residents who were consulted by Comcast.

Zoning board member Howard Goodrich told McKinnon that he thought the geography of the proposed site was not good.

"You're in a hole," Goodrich said. "It seems to me that there is a better solution for this plan."

Comcast's second witness was Gerry Tate, a radio frequency engineer, who testified about the need for a new tower and the physical aspect of towers already in the surrounding areas.

Tate explained repeatedly to Boroff that a tower was needed for Comcast to meet its customers' demands in the Royersford/Spring City area.

He said that with the current explosion of cellular phone users in the area, quality of calls is bad and some calls may not get through.

Boroff asked him if someone made a call on a cellular phone from the school at that moment would the call go through.

"Can they make a call? Yes."

Tate said.

Tate described the size and elevations of towers in the nearby area including Emericick, Collegeville, East Coventry, Lower Pottsgrove, Eagleville, Phoenixville and Oaks.

Tom Uckele, who lives on Third Avenue closest to the sight with his expectant wife, Beth, asked Tate if any of the surrounding towers were located near residences.

After consulting his maps, Tate could not find any towers that were located anywhere near people's homes.

The meeting ended after residents questioned Tate, but before Brant was able to redirect or ask follow-up questions.

The date of the next meeting was not set.

During the 10-minute recess period, attorneys for both sides were going over their calendars to find a mutually convenient date for the next hearing.

The lawyers got as far as the first week of June without finding a suitable date.

According to Brant, Comcast plans to call two more witnesses and possibly a third.

Then the borough will call its witnesses followed by any residents who wish to testify, he said.

After all the testimony is heard the zoning board has 45 days to render a decision.

A decision that may be meaningless because Comcast's next

APR 20, 1995

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**LUCE** PRESS CLIPPINGS

# Cellular tower in east Cobb shot down

## Commission denies request by Dial Call

By Jonathan Shikes

Marietta Daily Journal Staff Writer

Cobb County Commissioners toppled a request by Dial Call Inc. Tuesday to erect a 165-foot cellular pole less than four blocks from another tower, near the intersection of Johnson Ferry and Paper Mill roads in east Cobb.

Dial Call asked the commissioners to postpone the decision for 30 days until the Cobb planning commission completes a review of county policies toward cellular towers. But J.L. "Shot" Gueymand of the Chattahoochee Plantation Community Association, who opposed the tower, would not agree to the delay, forcing Dial Call to go ahead with its request at the

zoning hearing Tuesday.

We are concerned about looking at this 165-foot beast," Gueymand said. "There are places for the tower, but not there ... We want to uphold the residential integrity of the neighborhood."

Sam Olens, president of the East Cobb Civic Association, and Cassandra Mora of the Paper Mill Village Condo Association, also protested the tower.

"We don't want [the neighborhood] to become a magnet for these towers," Ms. Mora said. "The Board of Commissioners made the right decision. We are glad to have it over with."

During the hearing, Ms. Mora said the pole — which would have been only 25 feet from the 23-unit Paper Mill Village Office Complex at 161 Village Parkway — would be detrimental to property values and make it hard to find tenants.

John Moore of Marietta-based Moore and Rogers, which is representing Dial Call, said there is no evidence in the marketplace showing the poles have any adverse effect on property values.

"A cellular tower is no more obtrusive than power poles," he said. "In fact, they are less obtrusive ... Cobb leads the area in demand for cellular service. There is a need for these poles."

Moore also said Dial Call had offered to pay to move cellular equipment from a 113-foot BellSouth Mobility pole located 125 feet away to the Dial Call pole, so the two companies could "co-locate."

But Gueymand and Ms. Mora, who have said they favor co-location in most cases, opposed this offer since the Dial Call tower would be 50 feet taller than the BellSouth pole and closer to their properties.

"We've got to find places to conceal these towers better than this. I feel like there are better locations in the area," said Commissioner Joe L. Thompson.

Moore said he was disappointed that the hearing wasn't postponed for 30 days and added that Dial Call will consider suing the county since there is already one tower in the area and since the Dial

Call site is more than 400 feet from any residence.

"It would seem appropriate to investigate co-locating BellSouth's equipment on our monopole, and working out something with the neighborhood," he said.

Thirty land use permits for cellular structures have been approved in Cobb since 1989, and the industry estimates there will be at least 50 to 60 more requests for permits within the next five years, mostly along I-75, I-285, Cobb Parkway and in east Cobb. In five other cases, cellular towers from competing companies have been built within one mile of each other.

Last week, Commission Chairman Bill Byrne asked the county planning department to work with representatives for BellSouth Mobility, AirTouch and Dial Call — who all have towers in Cobb — to review county policies and ordinances and to discuss alternatives to standard towers and to building them in residential neighborhoods.

APR 1, 1995

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**LUCE** PRESS CLIPPINGS

# Selectmen balk at cellular phone tower sites

■ **IN BRIEF:** Marlborough selectmen Monday night unanimously rejected the three sites proposed for a cellular phone tower in town. They urge the exploration of further sites.

By Michael Lemanski  
Staff Writer

**MARLBOROUGH** - Nearly one week after residents hung up on a cellular phone company's plans for a phone tower in Marlborough, selectmen did the same, denouncing the three proposed sites.

In a unanimous, 3-0 vote, the Board of Selectmen Monday night recommended against any of the sites.

Selectmen also unanimously voted to urge the finance board to conduct a public hearing on a \$20,000 supplemental appropriation for technical and legal assistance for Metro Mobile of Wallingford's plan for the phone tower.

First Selectman Howard Dean said the \$20,000 expenditure would ultimately have to go before voters at a town meeting.

He said a town meeting would

confirm if the entire town was against the tower or if the opposition was limited to people living near the proposed sites.

"We're saying to the voters, 'Do you want to spend this money?'" Dean said. "It's as simple as that."

The funding, if approved, would go toward consulting fees for alternative towers less visible and obtrusive.

It would also pay for legal advice on the issue.

Currently the three proposed sites for a tower are Sherwood Lane near a residential area, the town center by Route 2, and a wooded area near the Marlborough Country Barn on North Main Street.

The Route 2 tower would be a 180-foot monopole tower, while the other two would be shorter, lattice-style towers similar to oil rigs.

The siting council is the state agency that has the final say on utilities tower locations and will choose a site that would best serve the public and be less obtrusive to residents.

Phone towers do not fall under the jurisdiction of local zoning boards.

At a public hearing March 21, residents blasted all three sites saying they were either too close to homes, too close to the center of town, or too close to the lake.

Most opposition centered on the phone tower harming the town's rural character and being an eyesore for residents.

The Lake Advisory Committee denounced the Marlborough Country Barn site, which is the closest to the lake.

"The Lake Advisory Committee believes that a tower located behind the Marlborough Country Barn would be aesthetically offensive because it destroys the natural beauty of the lake," according to a written opinion from the committee to the Board of Selectmen.

Dean said the selectmen's opposition to the sights reflects the opposition expressed by residents at the last public hearing and one last year.

"We're trying to respond to the wishes that we heard at the public hearing," Dean said. "We're keeping in mind that people live here for a reason - they want to be in the country. We're trying to be sensitive to that."

Metro Mobile could submit an application to the Connecticut Siting Council as early as April 5.

But Metro Mobile attorney Kenneth Baldwin said the phone company wasn't committed to applying to the siting council April 5 and could delay an application if alternative sites are technically feasible.

"We can submit it anytime afterwards," Baldwin said.

At the selectmen's meeting, three additional sites were discussed with one being town property at the corner of Cheney Road and Park Road.

Dean said the town property is a wooded area that's part of the Blish Park complex. He speculated that revenues from leasing the site for the tower could be used to improve the parks and recreation department.

Dean couldn't comment on the other two sites Wednesday because the property owners hadn't been notified of the discussions. Other potential sites were axed because the property owners weren't willing to sell or lease to Metro Mobile.

Baldwin said Metro Mobile will still work with Marlborough to try to find a suitable site.

"We've always looked at the sites that the town has suggested," Baldwin said.

At press time Wednesday it was uncertain whether the suggested alternative sites were technically feasible and would suit the needs of Metro Mobile. Metro Mobile officials were testing the sites during the week.

"We'll know very soon," Baldwin said Wednesday. "We'll know by the end of the week."

# Cities hang up on calls for towers

Upscale areas reject proposals for cellular phone structures, cite health, esthetic concerns.

By George Cantor  
*The Detroit News*

The fast-growing cellular telephone industry has run into a busy signal.

The same upscale areas that sign up the most customers for cellular phones are also the most likely to oppose construction of new antenna towers to handle their calls.

Farmington Hills and Orchard Lake both tabled requests for new towers last month, while West Bloomfield opposes any free-standing towers.

"They're going to have to get smarter about where they try to put them," says Tom Yack, Canton Township supervisor. "They're just not going to be able to come into residential areas and expect people to let the towers go up."

Julie Fraser, an Ameritech Cellular spokeswoman, agrees: "It's a question of us educating them better than we've been doing."

"For example, we are running into tremendous opposition based on health concerns, which just are not supported by medical research. We have to get that message out."

Much opposition also is based on esthetics. Homeowners do not want to look out their window and see a 165-foot-high tower, bristling with antennae, rising from their back yards.

Ameritech and Cellular One have resorted to placing towers on light standards at a football stadium in Canton, atop the water tower of a country club in West Bloomfield and disguised as a carillon on a college campus in Livonia.

The towers cost about \$750,000 to build, but lease payments are only \$1,000 a month. Ameritech is pushing the bill close to \$1,000 a month.

In Canton Township, for example, Ameritech built an addition to the police station, where it placed one of its towers, and allowed the township to use the facility for its own emergency communications.

"Everyone wins," says the general manager of the country club with the cellular tower. "We get a nice lease payment, our members get better communications, the residential area near us doesn't have to look at an unsightly tower and the phone company gets its facility."

The cellular industry continues to add 11,000 phone customers a day. Almost 15 million people use the equipment in the United States.

Antenna towers are needed to link car phones and switching stations to the number being dialed. But in places like Farmington Hills, residents are adamantly opposed to more.

Cellular company statistics indicate that the city has the highest concentration of users in Michigan. But the city also has 12 towers, three times as many as neighboring West Bloomfield. Its residents say that's plenty.

An Ameritech offer to build a 100-foot tower on the commons of Rolling Oaks subdivision, between Farmington and Drake roads, and 13

and 14 Mile, in return for a \$6,000 payment, was turned down by homeowners.

The company then asked nearby Faith Covenant Church if it could attach an antenna to its steeple. But residents also opposed that idea.

"This is a whole different ballgame," says Alan Voeko, who opposed the tower. "They are targeting these towers near schools and population centers, increasing the effect of microwave."

Dr. Colin Orton, director of medical physics at Wayne State University, says that no link between cancer and microwaves ever has been established. One case, in which a man died of brain cancer after using a cellular phone on a daily basis, was highly publicized but no carcinogenic relationship was found, said Orton.

Studies conducted by the Occupational Safety and Health Administration also have determined the technology is safe.

Detroit, MI  
News

Detroit Met Area

Monday

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APR 17, 1995

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# Planning Board tables tower issue over WCM residents' objections

Cape May, NJ  
Star & Wave  
Atlantic City Met Area

Thursday

W 6,000

APR 13, 1995

N46975

**LUCE** PRESS RELEASES

By HAROLD ROBITAILLE  
*Star and Wave Correspondent*

WEST CAPE MAY — Borough residents are up in arms over the possible installation of a 130-foot high cellular telephone antenna on a small section of the property upon which borough hall is located.

Citing aesthetics, the possible danger from radio wave transmissions and that the borough is possibly being cheated

on the deal, about 25 of the 70 people in attendance at Monday's Planning Board meeting where the issue was being discussed voiced their strong opposition to the project.

Borough officials previously reached an agreement with Comsat Cellular Communications Inc. of Wayne, Pa., to lease a small section of the property to the company. Comsat would then construct an antenna mast and a 456-

square-foot building to house an unmanned low-power radio repeater station.

The 20-year lease which calls for Comsat to pay \$8,400 per year to the borough with annual increases of about four percent, is contingent on planning board approval.

To construct the tower, Comsat must get site approval and two variances, one for use and one for height, according to

Planning Board attorney Jane Hoy. The borough's height limitation is 35 feet.

In general, the residents opposed the entire presentation made by the Comsat executives who addressed the Planning Board.

"They say the wattage is thousands of times below New Jersey standards," borough resident Anne Pratt said. "But how do we know what they are going to

add to it later?"

One man said that he just purchased property where he intends to build a house and that if he knew this tower would be in front of his picture window he would not have bought it.

One woman felt that the residents were being treated like a "bunch of bumpkins."

Later in a telephone interview, one woman cited three major objections: the

possible dangers, aesthetics and the law.

"Money isn't everything," said resident and West Cape May Civic Association member Myra Belasco. "\$8,400 or even \$84 million isn't worth the risk and danger from the tower."

"And over and above the aesthetics and the possible dangers, we have an ordinance because this is what the

(Please Turn to Page A5)



# Tower

(Continued from Page A1)

people want," Belasco continued. "It's the law and people want it to be upheld. If you let one person go, you have to let everybody else go."

Citing their "legal right" to return and continue their presentation with additional experts and hinting about previous successful legal actions to have planning board decisions overturned, Comsat officials asked for a continuance.

In the end, the board voted to table the issue until the next board meeting on May 8.

"I advised them (the board) to give Comsat as much opportunity as possible to present their case," Hoy said.

The board members who voted in favor of tabling the issue were Peter McCabe, Rin Robyn, Jake Harris, Dwight Coleman and Dianne Kwasnieski. Diane Rea and Elaine Walls, obviously wanting to conclude the issue then, voted against the postponement.

Board member Jack Vasser, who is also the mayor, and Harry Dolmetch abstained.

Procedurally, it is up to the applicant, Comsat in this case, to establish special and specific reasons for the board to grant the variances, according to Hoy. And legally, the Planning Board cannot simply decline to issue the variances on a whim; they must have legitimate reasons.

Comsat said that cellular telephone towers have an "inherently beneficial use" and that they have used this argument to get Planning Board refusals overturned in the past.

Hoy confirmed that there is precedent

case law that such towers do have an inherently beneficial use but said that the situation in West Cape May is different than in other communities.

"There are a number of issues that are arguably different from other cases in the state," Hoy said. "One possibility is that there are no other towers existing in the municipality that could approach this particular height."

Many people feel the tower will be an eye sore but aesthetics alone cannot be the only reason for refusing to grant the variances.

"Aesthetics can be a consideration made by a board," Hoy said. "But not the only thing."

This all started last fall when Comsat contacted commissioner Jim Roney. And after numerous discussions, the commissioners passed a resolution and signed a lease with the company.

"All three of us decided that it was not a bad deal," Roney said. "It was all predicated on whether the planning board would give them a variance."

"We felt it was in the best interest of the community," Roney continued. "We all felt that way, Mayor Vasser, commissioner Reid and myself. We could pick up some additional revenue without doing anything for it except lease a piece of property."

Should the planning board decline to issue the variances, the lease will become void, according to borough attorney Frank Corrado.

Should the planning board decline Comsat's variance request, the company's only recourse would be to take the issue to state Superior Court.